

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JEFF TABOR and
LORI CALDERON TABOR,

Plaintiffs,

v.

No. _____

STATE FARM MUTUAL
AUTOMOBILE INSURANCE COMPANY,

Defendant.

NOTICE OF REMOVAL

Defendant State Farm Mutual Automobile Insurance Company (hereinafter “State Farm”), by and through its counsel of record, Miller Stratvert P.A. (Todd A. Schwarz), hereby gives notice of removal of this matter to the United States District Court for the District of New Mexico as follows:

1. Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant State Farm hereby gives notice of removal of all counts and claims asserted by the Plaintiffs in the civil action filed in the Fifth Judicial District, County of Lea, State of New Mexico, styled: Jeff Tabor and Lori Calderon Tabor v. State Farm Mutual Automobile Insurance Company; Fifth Judicial District Cause No. D-506-CV-2016-01089 (the “State Court Action”). Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on State Farm to date are attached hereto as Exhibit 1 (Summons and copy of transmittal letter from Office of Superintendent of Insurance) and Exhibit 2 (copy of the below-defined Complaint).

2. Plaintiffs’ original filing, which is titled as “Complaint for Damages from Personal Injury, for Recovery of Underinsured Motorist Benefits Pursuant to an Insurance

Contract, Breach of Contract, and Insurance Bad Faith” (hereinafter the “Complaint”), was filed in the Fifth Judicial District Court on September 9, 2016. The Complaint and Summons were served on Defendant State Farm through the State of New Mexico, Office of Superintendent of Insurance, which accepted service on October 5, 2016. *See* Exhibit 1. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) within thirty (30) days of service of the Complaint and Summons.

3. Defendant State Farm states that this is an action of a civil nature in which the United States District Court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between Plaintiffs and Defendant, and the amount in controversy exceeds \$75,000.00.

4. The Complaint asserts that Plaintiffs are residents of Lea County, New Mexico. *See* Exhibit 2, Complaint ¶ 1.

5. The Complaint asserts that Defendant State Farm “is a foreign corporation and non-resident” (*see* Complaint ¶¶ 2–3). State Farm admits this allegation. State Farm is a resident of the State of Illinois, as it is incorporated in Illinois and has its principal place of business in the State of Illinois. *See* Exhibit 3, Affidavit of Jim Larson.

6. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

7. The following is established on the face of the Complaint. This case involves an actual controversy between Plaintiffs, on the one hand, and Defendant State Farm, on the other hand, regarding insurance coverage and insurance practices. Plaintiffs allege that they at one time had an insurance policy issued by State Farm; that Plaintiffs suffered personal injuries due to a vehicle collision of October 13, 2010 that was caused by Ms. Brandi Carter (“Ms. Carter”); that Ms. Carter was “an uninsured/underinsured motorist as defined by New Mexico laws and

contemplated by” the State Farm policy; that Plaintiffs are entitled to recover damages from State Farm pursuant to that policy; and that State Farm has wrongfully refused to pay Plaintiffs for their claimed damages. *See* Complaint ¶¶ 5–6, 12–13, 17–27.

8. Plaintiffs further allege that they are entitled to an award of punitive damages against Defendant State Farm. *See* Complaint ¶¶ 28–29.

9. Plaintiffs further allege that they are entitled to recover their attorneys’ fees from Defendant State Farm. *See* Complaint ¶ 22.

10. Plaintiffs further allege that they “have sustained damages including, but not limited to, past and future medical expenses, past and future pain and suffering, lost wages in the past and loss of economic earning ability, loss of enjoyment of life, and all such other damages or other relief available under New Mexico law” *See* Complaint ¶¶ 24-27.

11. In their Prayer for Relief, Plaintiffs seek judgment against Defendant State Farm for compensatory damages, punitive damages, costs and attorney fees, actual damages for breach of contract, and pre-judgment and post-judgment interest. *See* Complaint at 8-9.

12. Without admitting any of the foregoing allegations, Defendant State Farm respectfully submits that the aggregate “value” of what Plaintiffs seek to recover in this case, including Plaintiffs’ claim for punitive damages, exceeds \$75,000.00. *See Wiatt v. State Farm Ins. Co.*, 560 F. Supp. 2d 1068, 1075 (D.N.M. 2007) (providing court may “aggregate actual damages, punitive damages, attorneys’ fees, and statutorily imposed penalties” when determining whether jurisdictional amount requirement is satisfied).

13. The United States Supreme Court has recently clarified that “as specified in § 1446(a), a defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold. Evidence establishing the amount is required

by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the defendant's allegation." *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 554 (2014).

14. Notice is being provided to Plaintiffs of the filing of this Notice as required by 28 U.S.C. § 1446(d).

15. A copy of this Notice will be filed with the Clerk for the District Court for Lea County in the State Court Action as required under 28 U.S.C. § 1446(d).

Respectfully submitted,

MILLER STRATVERT P.A.

By /s/ Todd A. Schwarz

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of October, 2016, a copy of the foregoing was electronically filed through the CM/ECF system, which caused the following participating CM/ECF counsel to be served with same by electronic means and via U.S. Mail to:

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/s/ Todd A. Schwarz

Todd A. Schwarz